Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person: 199906054

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In Reference to: OP:E:EO:T:1

Date: NOV 18 1998

Key District Office:
Employer Identification Number:

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Dear Sir or Madam:

On March 31, 1997, we issued Private Letter Ruling 9726021 to M and its affiliates, N, O, and P, concerning the sale of their assets to R and its affiliate, S. M, N, O and P are collectively known as V. In that letter, we provided eight rulings regarding the proposed transactions relating to (1) tax exempt status under section 501(c)(3) of the Internal Revenue Code, (2) foundation status under section 509(a), and (3) unrelated business taxable income liability under sections 511 and 512.

You have submitted an amended request (Amendment) for rulings on behalf of M and its affiliates. In Amendment, you have requested that we confirm seven of the eight rulings issued in the response to your original ruling request.

Amendment summarizes the revised terms and conditions of the proposed transaction that have occurred since the submission of the original ruling request and that are now reflected in the Purchase Agreement (Agreement). Particular emphasis is given to those matters impacting the continued applicability of the original ruling request.

General Updated Facts:

The general updated facts are as follows: At the end of January 1997, R merged into a wholly-owned subsidiary of T. At this juncture, it was uncertain that T would accept the proposed transaction as negotiated by R. In March 1997, T representatives made it clear to M representatives that the proposed transaction would need to be renegotiated by virtue of T's acquisition of R.

After renegotiating the terms, V, excluding P, agreed to transfer substantially all of their respective operating assets to Y and Z. Hereafter, Y and Z shall collectively be referred to as Newco. Y and Z are indirect, wholly-owned corporate subsidiaries of T.

Specific Updated Facts:

1. P Is No Longer A Party To the Proposed Transaction:

Although P, in conjunction with M and its affiliates, contemplated a contemporaneous sale of its home health business assets to T, the Board of P declined to participate in the proposed transaction. This dispute resulted in litigation between P and N; however, the parties have entered into a Settlement Agreement (Settlement). The Settlement provided that P is no longer affiliated with N from a corporate perspective. The Settlement is currently awaiting state regulatory approval.

The Settlement requires P and N to amend their respective By-laws, thereby deleting the rights and obligations of each to the other from their governing bodies and organizational documents. In addition, the Settlement mandates a reciprocal resignation of all trustees, committee members, etc.

Notwithstanding the corporate disaffiliation, P and N have entered into a Revised Home Care Services Agreement. This agreement provides that P will continue to serve as M's preferred provider of home health services through c unless terminated by either party.

Though M represents that this litigation should not impact the proposed transaction, the departure of P as a party substantially alters several key components of the proposed transaction, including: (1) the purchase price and purchase price allocation; (2) the assets to transferred; (3) the net working capital adjustments to the base purchase price; (4) the assumption of liabilities under the Agreement; (5) the "excluded liabilities" not assumed by T; and (6) the distribution of sale proceeds to Q.

2. Right of First Refusal to Repurchase Assets

Recently, the state legislature promulgated a new law. The new law, in pertinent part, establishes a detailed application, review and approval process when a nonprofit hospital proposes to sell substantially all of its operating assets to a for-profit buyer. Specific review procedures are applied by the d Attorney General and the d Department of Health to determine if the nonprofit hospital satisfies the requirements of the law.

In addition, the law requires regulatory consideration of whether the nonprofit hospital maintains a Right of First Refusal (ROFR) to repurchase the assets from the for-profit buyer. Under such a right, and under described circumstances, following the sale of the assets of a nonprofit hospital, such sale proceeds could be made available to repurchase hospital assets and affiliated entities.

The promulgation of the law directly impacts the proposed transaction. Hence, the Agreement was renegotiated to include the detailed provisions regarding the ROFR.

3. Adjustments to the Purchase Price

Following the merger of R and T, substantial additional arm's-length negotiations were held between T and V regarding the purchase price. As a result of these negotiations, the base purchase price and specific purchase price adjustments were revised. The base purchase price under the original ruling request was e. The base purchase price, excluding P's assets, under the Amendment is f.

This g reduction relates to a variety of factors. Primarily, when the original ruling request was filed, the purchase price was not a binding term of the agreement but rather an oral representation from a senior R representative. Moreover, it was necessary for the Q Special Committee and the R Board of Directors to approve the purchase price. Eventually, a purchase price of h was agreed upon as the purchase price for the V assets.

The h purchase price was further reduced through P's decision not to participate in the proposed transaction. Because P is not participating, the total base purchase price was reduced consistent with T's proportionate total base purchase price assessment of P's assets. M and T representatives agreed that the base purchase price would be reduced by I. Hence, the final amended base purchase price established was f.

4. Net Working Capital Adjustment

In both the original ruling request and the Amendment, V and T agreed that an adjustment to the cash base purchase price should be computed at the date of closing, based on the closing balance sheet information of V. Under the Amended Agreement, the f base purchase price will be increased at closing by the amount, if any, by which the aggregate net working capital on the final balance sheets of V exceeds j in the aggregate. In addition, the base purchase price will be decreased at closing by the amount, if any, by which the aggregate net working capital of V is less than j.

5. Other Purchase Price Adjustments:

In the final terms with T, the Agreement also provides for a positive adjustment to the base purchase price for approved capital expenditures to reflect the fact that if T agrees with M that specific capital expenditures be made by V prior to closing, then the base purchase price will be increased at closing to reimburse V for such expenditures.

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6. Allocation of Purchase Price

Schedule 2.9 allocates the base purchase price (before the net working capital and other adjustments at closing) to the specific assets or groups of M Assets. Section 2.9 of the Agreement provides that Schedule 2.9, as amended at closing and thereafter, establishes the legal right of each of V to their respective specific portions of the base purchase price and therefore, entitlement to the specific dollar amounts for their respective assets, or group of assets, which have been sold to T for federal income tax and state law purposes.

7. Q as an Additional Party

Section 6.4 of the Agreement provides that to the extent that V transfers any portion of the purchase price to another party, such as Q, then V must cause Q to execute the Agreement as an additional party and to execute such additional documents as necessary to assume joint and several liability with V for the indemnity obligations and other covenants of V under the Agreement.

8. Indemnification Escrow

Article 11 of the Agreement provides that V agrees to indemnify T, subject to the conditions and exceptions in Section 11.2 of Agreement, against (1) inaccuracies in any warranty or representation by V; (2) nonfulfillment of V's obligations under the Agreement or closing documents; and (3) other matters as delineated in Section 11.1 of the Agreement. k of the cash purchase price will be paid into an escrow account at closing and held according to the escrow agreement terms. V's liability for any indemnity claim based on inaccurate representations and warranties is limited to the amount of the escrow deposit. Pursuant to the Escrow Agreement, after three (3) years, and provided T has not made any claims against the escrow in excess of k, the remaining balance shall be disbursed to V.

9. The W Transaction

In the original ruling request, you represented that M's negotiation with R, regarding the proposed relationship between W and M Employed Physicians, was incomplete. Since that time, the W transaction is reflected in a memorandum of understanding attached to the Agreement.

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W is a large multi-specialty physician clinic and an affiliate of T. As a closing prerequisite, Section 9.7 of the Agreement provides that the physician (and related support) employees of V shall be offered employment by W upon terms acceptable to V. In addition, W agrees with T to acquire the assets and assume the contracts and liabilities associated with the M employed physicians as well as the operations of X. X is an indirect taxable subsidiary of Q which performs specific management services for M employed physicians.

10. Requirement to Defease the 1993 Bonds

As a prerequisite to closing, M is required to obtain and draw on a direct pay letter of credit, issued by a nationally recognized banking association, in order to defease the 1993 bonds in accordance with and subject to the appropriate bond documents.

11. T Covenants in favor of V:

a. T shall provide charity care consistent with the existing charity care policies of M.

b. T covenants that for a period of three (3) years after the closing, it will not eliminate or materially reduce the scope of the hospital-based services as depicted in Schedule 7.4(a) of the Agreement. Consequently, T will continue to satisfy the community health care needs in M's primary service area.

c. T covenants that it will continue to uphold the definitive agreements entered into by W to provide physician primary care or psychiatric services in M's primary service area, thereby continuing to meet the community's health care needs.

d. T will work with M, W, physicians and others in order to develop integrated health care solutions to meet the needs of the communities served by M.

e. At closing, T will establish a Board of Trustees for the now for-profit "M" (formerly the nonprofit M) of not less than nine (9) persons comprised in part of physicians and other persons who reside in M's primary service area. V shall have the right to nominate four

(4) persons, two (2) of whom shall be chosen by T to serve on the initial post-closing hospital Board of Trustees.

f. Following the closing, T shall make such capital expenditures with respect to M's hospital facilities as reasonably necessary to maintain the facilities in good operating condition.

g. If by virtue of a business combination or otherwise, Newco and T, directly or indirectly, beneficially or otherwise, has or obtains or controls another initial application (within the meaning of applicable state law) in addition to the initial application filed with respect to the proposed transaction, Newco and T have agreed to use their best efforts to cause M's application to be approved by the appropriate governmental authorities in preference to any other initial application.

h. Newco acknowledges that M's heritage of over 100 years of providing acute care services in the a community is extremely important and maintaining this heritage is consistent with Newco's desire to maintain quality health care and good relations within the a and b communities. Newco acknowledges that the plaques and portraits located within M's facilities are important in retaining this heritage and Newco will use its reasonable best efforts in retaining and maintaining this heritage.

12. Assumption of Q's Severance Agreements

T has decided that Newco will not assume the five (5) amended and restated severance agreements for the M senior management team. However, Newco agrees to provide such persons comparable employment, as defined in each person's respective severance agreement.

Post-closing Activities:

In addition to the aforementioned changes, the post-closing activities of M, N, O, and P have also been modified. Below is a summary of each organization.

A. Post-closing Activities of P.

Because P is no longer involved in the proposed transaction, post-closing activities are no longer an issue and such ruling is neither required nor requested.

B. Post-closing Activities of M.

Simultaneous with closing, M must change its name so that Newco can use the same name.

In the original ruling request, at the commencement of closing, M was to reconfigure itself to own and operate a community and conference center in a. After evaluating the financial viability of this project, M decided not to go forward with the proposed plan to construct, own and operate a community center after the closing. Hence, M is not seeking a confirmation regarding the impact of the community center on M's tax exempt status.

An additional change in M's post-closing activities relates to the ROFR which will be held initially by V. The mechanics necessary to exercise the ROFR are as follows:

(1) The ROFR to repurchase the hospital and related health care assets sold to Newco is granted to V by the Agreement;

(2) Following the closing of the proposed transaction, the ROFR will remain with M and the other V until M reconfigures its organizational structure.

(3) After M reconfigures its organizational structure, and upon V giving notice that the assignment event has occurred under the Q Assignment and Assumption Agreement, the ROFR provisions will be distributed or assigned to Q.

(4) In order for Q to fund any portion of the purchase price required in connection with any exercise of the ROFR, Q must: (1) either (a) form a new 501(c)(3) entity to own and operate an acute care hospital and related health care business or (b) use the post-closing M section 501(c)(3) entity for such purposes; (2) assign the ROFR provision; and (3) undergo a reconfiguration of its organizational documents so that either M or the new 501(c)(3) entity would become Q's new publicly supported organization simultaneously with any funding of the exercise of

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the ROFR with Q's assets.

It is currently anticipated that to effectuate the revised M reconfiguration, at some point during or at the end of the post-closing Period, M must amend its governing documents to provide that its revised tax-exempt charitable purposes include: (1) managing and investing the remaining assets that are neither sold to Newco nor distributed to Q, including without limitation the 2.74 acre parcel; (2) serving as the section 501(c)(3) entity which may be utilized if V or Q exercise the ROFR provisions; (3) continuing its prior promoting of its health care tax-exempt purposes in the same manner and to the same extent as M prior to the closing, if M exercises the ROFR provisions and reacquires the hospital and related assets and (4) managing and investing the remaining assets of the corporation either not sold to Newco or distributed to Q and distribute annually, after the payment of or provision for expenses and liabilities, the income from such remaining assets as grants for charitable purposes which may include discretionary grants to Q.

C. Post-closing Activities of N.

Immediately after closing, N will remain the sole member of M and Q. N will retain its reserved powers over the corporate actions of M and Q until U, a section 501(c)(3) public charity, replaces N as the sole member of Q.

D. Post-closing Activities of Q.

Pursuant to the Q Assignment and Agreement, Q becomes responsible for future indemnity obligations emanating from the Agreement, but only to the extent of the proceeds actually received by Q. Upon the assignment event, Q will become the successor to V's rights under the Agreement, including the right and responsibility to enforce Newco's covenants in the Agreement, including the ROFR provisions.

The assignment event occurs when V provides written notice to Q stating that the assignment event has occurred for purposes of the instrument. Until the assignment event occurs, V retains sole and exclusive rights to enforce assigned rights.

Q's post-closing activities, which differ from the original ruling request, are also as summarized as follows:

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1. During the first four years after closing (transition period), Q will elect a new board consisting of nine trustees. After the transition period, Q will establish a permanent board.

2. As Q's sole member, U will have specified reserved powers. Such reserved powers include: (a) authorizing the dissolution, merger, affiliation or consolidation of Q; (b) authorizing the transfer of all or substantially all of Q's ~~assets~~; and amending Q's governing documents.

3. Q and U expressly agree that the decision to exercise the ROFR is the exclusive province of Q's Board of Trustees. Moreover, Q shall have the power to exercise the ROFR and fund all or part of the purchase price without the consent of U.

In connection with the amended ruling request, M makes the following representations:

1. The purchase price paid by Newco for the assets of V is the result of arm's-length negotiations with T, and the negotiated purchase price of the assets of V is at fair market value.

2. There is no relationship between the members of the N Special Committee, the Special Independent Committee, the Q Transition Committee, the Ad Hoc Committee, the Q Board of Trustees, the N Board, the Q Board of Trustees or any of their corporate affiliates and the stockholders or officers of T or its affiliates.

3. The updated valuation furnished to M was prepared in a manner generally consistent with the valuation of medical practices principles established in the 1995 and 1996 Professional Education text books produced by the Exempt Organization's Division of the Internal Revenue Service.

4. No member of the Board of Trustees of M, of N's Special Committee, of N's Executive Committee, of the Special Independent Committee, of Q's Transition Committee, of the Ad Hoc Committee, of the N Board, of Q's Board of Trustees nor of the boards of directors for the taxable subsidiaries, and no officer of the medical staff of M, and no officer nor any other member of M's senior management team, nor any of their relatives, has received or will receive any compensation, consideration or other forms of direct or indirect payments from T or its affiliates to induce or

influence M, N, Q or the taxable subsidiaries to agree to enter into the Agreement or to consummate the proposed transaction.

5. There are no finder's or broker's fees to be paid by either M, N, Q, the taxable subsidiaries, Newco or T with respect to the proposed transaction.

6. The base purchase price of f (before considering the net working capital adjustment and the other adjustments) to be paid for the V assets by Newco is substantially higher than the updated total valuation of the assets of V of 1.

7. For the fiscal year ending September 30, 1997, M will satisfy the dual test of sections 509(a)(2)(A) and 509(a)(2)(B) of the code, based on an aggregate of the results in the four years ending September 30, 1997, as set forth in section 1.170A-9(e)(4) of the Income Tax Regulations.

8. Following the consummation of the proposed transaction, M will continue to exist, and until the revised M reconfiguration is consummated, M will operate in accordance with its existing Articles of Incorporation and existing By-laws in furtherance of its tax-exempt charitable purposes. M will additionally seek to settle outstanding issues regarding its participation in the Medicare and Medicaid programs and the termination of its qualified employee benefit plans, to monitor the initial activities of Newco to ensure fulfillment of its obligations under the Agreement, to settle all other outstanding liabilities, including, without limitation, unasserted malpractice and general liability claims, and to otherwise wind down M's former acute care hospital and related operations that were conducted up through closing. Following the consummation of the Revised M reconfiguration, M will operate in accordance with the amended M organizational documents in furtherance of its continuing tax exempt charitable purposes.

9. At the conclusion of the post-closing period and after anticipated interim distributions to Q during such post-closing period, it is M's intention that after adequate provision for or satisfaction of liabilities and uses in accordance with ongoing nonprofit purposes, M will manage and invest the remaining assets of the corporation either not sold to Newco or distributed to Q and distribute annually, after the payment of or provision for expenses and liabilities, the income from such remaining assets as grants for charitable purposes which may include discretionary grants to Q.

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10. During the post-closing period, and thereafter until M is dissolved and liquidated in accordance with d state law, N will continue to operate in accordance with its existing governing documents as a supporting organization of M.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3), including organizations that are organized and operated exclusively for charitable, educational or scientific purposes.

Section 509(a)(3)(A) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization which is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2).

Section 511(a) of the Code imposes a tax on the unrelated business income of organizations described in section 501(c).

Section 512(a)(1) of the Code defines unrelated business taxable income as the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the allowable deductions, which are directly connected with the carrying on of the trade or business.

Section 513(a) of the Code defines an unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise of the organization's exempt purposes or functions.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Section 1.513-1(d)(2) of the regulations provides, in part, that a trade or business is related to exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes; and it is substantially related for purposes of section 513 of the Code only if the causal relationship is a substantial one. Thus, for the conduct, of a trade or business, from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of exempt purposes.

Section 1.509(a)-4(b)(1) of the regulations provides that in order to qualify as a supporting organization, an organization must be both organized and operated exclusively "for the benefit of, to perform the functions of, or to carry out the purposes of" one or more specified publicly supported organizations. If an organization fails to meet either the organizational or the operational test, it cannot qualify as a supporting organization.

Section 1.509(a)-4(c)(1) of the regulations provides that an organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) only if its articles of organization:

(I) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);

(ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes referred to in subdivision (I) of this subparagraph;

(iii) State the specified publicly supported organizations on whose behalf such organization is to be operated; and

(iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organization referred to in subdivision (iii) of this subparagraph.

Section 1.509(a)-4(d)(2)(I)(a) describes supporting organizations that are "operated, supervised or controlled by" (within the meaning of section 1.509(a)-4(g)) or "supervised or controlled in connection with" (within the meaning of section 1.509(a)-4(h)) one or more publicly supported organizations.

Section 1.509(a)-4(d)(3)(I) of the regulations provides that:

if the requirements of subparagraph (2)(I)(a) are satisfied, a supporting organization will not be considered as failing the test of being organized for the benefit of "specified" organizations solely because its articles:

(I) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles.

Section 1.509(a)-4(e)(1) of the regulations provides that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations.

In the general law of charity, the promotion of health is considered to be a charitable purpose. Restatement (2nd), Trusts, Sections 368 and 372; IV Scott on Trusts (3rd ed. 1967), Sections 368 and 372.

Rev. Rul. 67-149, 1967-1 C.B. 133, holds that an organization formed for the purpose of providing financial assistance to several different section 501(c)(3) exempt organizations is exempt from federal income tax if such organization carries on no other activity other than (1) receiving contributions and incidental investment income; (2) making distributions of such income to such exempt at periodic intervals and (3) the organization does not accumulate its investment income.

Rev. Rul. 69-463, 1969-2 C.B. 131, provides that if an exempt hospital leases an adjacent building to a hospital based medical group, then such activity is not an unrelated trade or business under section 513 of the Code.

Rev. Rul. 69-464, 1969-2 C.B. 132, provides that the leasing of office space adjacent to a hospital to members of the medical staff contributes importantly to the hospital's exempt purpose. Hence, the lease is not a business lease within the meaning of section 514 of the Code.

Rev. Rul. 69-545, 1969-2 C.B. 117, establishes that a nonprofit organization whose purpose and activity include providing hospital care is promoting health and may, therefore, qualify as organized and operated in furtherance of a charitable purpose, provided other requirements of section 501(c)(3) are satisfied.

Rev. Rul. 74-132, 1974-1 C.B. 152, confirms that an exempt foundation that fosters and supports the activities and purposes of an exempt hospital corporation and to advance the hospital's objectives, including, the sponsorship of specific projects and programs to improve the hospital's services to its patients and to support and promote the hospital's education, training and research programs is exempt within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 78-41, 1978-1 C.B. 148, holds that a trust created by an exempt hospital for the sole purpose of accumulating and holding funds to be used to satisfy malpractice claims against the hospital and from which the hospital directs the bank trustee to make payments to claimants qualifies for exemption under section 501(c)(3) of the Code. By serving as a repository for funds paid in by the hospital, and by making payments at the direction of the hospital to persons with malpractice claims of the hospital, the trust is performing a function that the hospital could do directly.

Section 501(c)(3) organizations do not jeopardize their tax-exempt status by transferring their assets to other organizations exempt under section 501(c)(3) where the assets transferred are used to further exempt charitable purposes.

Because the facts in your Amendment differ materially from those in your original ruling request, we are unable to provide you with a confirmation of the rulings issued in Private Letter Ruling 9726021. However, we can provide you with the seven requested rulings regarding the effect the selling of M's assets shall have on M, N and Q's (1) tax-exempt status, (2) foundation status, and (3) unrelated business income tax liability.

P has been recognized as an organization described in section 501(c)(3) of the Code as a home health agency and is not a private foundation because it qualifies as a public charity under section 509(a)(2). P's decision not to participate in the proposed transaction has no adverse affect on the proposed transaction because P's absence is appropriately reflected in the proportionate reduction in the purchase price. Hence, the litigation resulting in P's severance from the proposed

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transaction will have no adverse affect on M, N, or O's tax-exempt status, foundation status or unrelated business income liability.

Tax-exempt Status.

M has been recognized as an organization described in section 501(c)(3) of the Code and is not a private foundation because it qualifies as a hospital pursuant to sections 509(a)(1) and 170(b)(1)(A)(iii). After the reconfiguration, M will distribute annually the income from investment assets as grants for charitable purposes which may include discretionary grants to O. Such activities are charitable within the meaning of section 501(c)(3). See Rev. Rul. 67-149, supra.

Furthermore, M has represented that Newco is paying fair market value for the assets and that the proposed transaction is at arm's length. Therefore, the sale of M's assets will not constitute inurement of M's net earnings to the benefit of any private shareholder or individual, nor will it result in any private benefit. Accordingly, the proposed sale of M's assets will not adversely affect the tax-exempt status of M.

N is the supporting organization of M. During the post-closing period, N will continue to serve as the sole member of M. N will continue to provide such supporting activities until U replaces it. Because N is providing supportive activities as discussed in Rev. Rul. 78-41, supra, until liquidation, N will continue to qualify as a tax-exempt organization pursuant to section 501(c)(3) of the Code.

Contemporaneously with the closing, O's governing documents will be amended to provide that O shall operate exclusively as the supporting organization of U. Because O is providing essential support activities integral to U as discussed in Rev. Rul. 78-41, supra, O will continue to qualify as a tax-exempt organization pursuant to section 501(c)(3) of the Code.

Foundation Status:

Although M was previously classified as a public charity pursuant to sections 509(a)(1) and 170(b)(1)(A)(iii) of the Code, M will continue to qualify as a public charity because it satisfies section 509(a)(2)(A). Therefore, the proposed transaction will not affect M's foundation status as a public

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charity.

N is currently classified as a public charity pursuant to section 509(a)(3) of the Code. Immediately after closing, N will remain the sole member of M and Q. Since N will continue to serve as a supporting organization for M and Q, there is essentially no change in N's supportive activities. Hence, the proposed transaction will not adversely affect N's foundation status as a public charity under section 509(a)(3).

Currently, Q is classified as a supporting organization under section 509(a)(3) of the Code because Q serves as a supporting organization to N. In the original ruling request, it is represented that Q will change its supporting activities to support U instead of N. After the reconfiguration, Q and U shall be controlled and managed by the same individuals. This affiliation qualifies Q as a public charity pursuant to section 509(a)(3). See section 1.509(a)-4(h)(1) of the regulations. Because Q and U have synonymous control and management, Q is supervised or controlled in connection with U and should be classified as a public charity under section 509(a)(3). Furthermore, such relationship ensures that Q will be responsive to the needs and requirements of U. Hence, the proposed transaction will not adversely affect the foundation status of Q.

Unrelated Business Income Tax:

The proposed one time sale of M's assets displays neither the frequency, continuity, nor commercial attributes that constitute a trade or business regularly carried on within the meaning of section 512 of the Code. Hence, the proposed sale of M's assets to V will not result in any unrelated business taxable income to M, N, or Q under section 511 of the Code.

Accordingly, based on the facts and circumstances presented herein, we rule --

1. That consummation of the proposed transaction will not adversely affect the tax-exempt status of M, N, or Q under section 501(c)(3) of the Code.

2. That the gain realized by M as a result of the sale of M's assets to Newco will not constitute unrelated business taxable income pursuant to section 512 of the Code and, therefore, will not be subject to the tax on unrelated business

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taxable income pursuant to section 511 of the Code.

3. That during the post-closing period, M will continue to qualify as an organization described in section 501(c)(3) of the Code other than as a private foundation described in section 509(a), by virtue during the post-closing period of M's qualification under section 509(a)(2), and that, after the post-closing period, M will continue to qualify as an organization described in section 501(c)(3) other than a private foundation described in section 509(a) for so long as the section 509(a)(2) support test shall continue to be satisfied.

4. That the consummation of the revised M reconfiguration will not affect M's tax-exempt status under section 501(c)(3) of the code.

5. That during the post-closing period and thereafter until the earlier of (1) M's failure to satisfy the section 509(a)(2) support test, or (2) when M is dissolved and liquidated in accordance with d law, N will continue to qualify as a "supporting organization" of M under section 509(a)(3) of the Code.

6. That following the consummation of Q's reconfiguration, Q will continue to qualify as an organization described in section 501(c)(3) of the Code other than a private foundation described in section 509(a)(3) by virtue of Q's qualification under section 509(a)(3) as a supporting organization of U.

7. That Q's receipt of the distribution of proceeds of the proposed transaction in one or more distributions from M will not adversely affect the tax-exempt status of M, N or Q under section 501(c)(3) of the Code.

These rulings are based on the understanding that there will be no material changes in the facts upon which they are based.

These rulings do not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

These rulings are directed only to the organization that requested them. Section 6110(j)(3) of the Code provides that they may not be used or cited as precedent. In this letter we are not determining whether any amounts paid for assets are in fact the fair market value of such assets.

Sincerely,
Marvin Friedlander

Marvin Friedlander
Chief, Exempt Organizations
Technical Branch 1

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